

**Statement Submitted for the Record by
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**Committee on Ways and Means
U. S. House of Representatives
Hearing “Improving Retirement Security for America’s Workers”
February 20, 2019**

Comments on Selected Proposals to Improve Retirement Security and Saving²

Chairman Neal, Ranking Member Brady, and Members of the Committee, we appreciate the opportunity to submit these comments for the record in the hearing referred to above on the important topic of improving retirement security for America’s workers. We are not submitting this statement on behalf of any person or organization, but only on behalf of ourselves as individuals, and we have not received financial support from any person or entity for this statement. Accordingly, the comments set out in this statement are solely those of the three co-authors and should not be attributed to any other person or organization.

We offer here a number of observations about policy issues raised by several key proposals that are, or recently have been, under consideration in Congress to help address a number of concerns about the current private pension system. These include the lack of lifetime income in 401(k) plans and the barriers facing efforts to expand coverage through economies of scale by combining small, unrelated employers’ work forces in a single plan.³

Most of the generally bipartisan retirement proposals evaluated here – permitting open multiple employer plans (MEPs), reforming required minimum distribution rules, providing a fiduciary safe harbor for annuities in defined contribution plans, and enhancing disclosure of lifetime income -- have gained bicameral support and appear to stand a very good chance of enactment. Our assessment is that, in the aggregate, they are likely to bring about a meaningful net improvement in the retirement landscape (except for the idea described in section V, below). However, some of these approaches need to be modified and, importantly, should not be—and generally are not—seen as a savior for the nation’s ongoing retirement challenges. Put simply, they should help retirement savers and retirees in a variety of ways, but will not markedly change our country’s retirement outlook. That will require more expansive solutions -- including, first and foremost, a robust legislative effort to dramatically expand retirement savings coverage through automatic enrollment of tens of millions of uncovered workers in private-sector IRAs.⁴

I. Permitting Open Multiple Employer Plans (MEPs)

Multiple employer plans, or “MEPs,” are retirement plans sponsored by a collection of employers that are not affiliated through common control or ownership. The rationale behind MEPs is based on the

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² Proposals such as those evaluated here in Sections I through IV have been included in legislation that has been working its way through Congress since 2016. See, e.g., Retirement Enhancement and Savings Act (RESA), S. 2526 and H.R. 5282, 115th Cong. (2018).

³ These comments are an abbreviated version of somewhat more extensive comments set forth in a paper expected to be available shortly, pending approval, at <https://www.brookings.edu>. In the interest of brevity, this statement omits most of that paper’s introductory and contextual material and summaries of legislative provisions.

⁴ See, e.g., Automatic IRA Act of 2017, H.R. 3499 (Rep. Richard Neal, D-MA), S. 1861 (Senator Sheldon Whitehouse, D-RI), 115th Congress (2017-18).

observation that smaller employers are less likely to offer workplace retirement plans, in part because the per-worker cost is higher for small companies who employ fewer workers among whom to spread fixed costs of providing benefits.⁵ For decades, therefore, efforts have been made to expand coverage by combining different employers' workforces in the same plan to realize economies of scale.

MEPs face substantial regulatory barriers that many experts believe have depressed their adoption. ERISA (the Employee Retirement Income Security Act of 1974, as amended) treats employees as participating in a single, employer-sponsored pension plan if they are employees of a single employer and/or an employee organization. For this purpose, ERISA treats as an employer "any person acting . . . indirectly in the interest of an employer, in relation to" a plan, and includes "a group or association of employers acting for an employer in such capacity."⁶ The Labor Department and the courts generally have interpreted this to mean that each employer jointly sponsoring a plan will instead be treated as sponsoring a separate plan covering only its own employees, unless the employers have an economic nexus and commonality of interests (often referred to as a "common bond") unrelated to their purported joint plan sponsorship.⁷

The common bond provision is seen by some as protecting employees. In general, the Labor Department and the courts have been more confident in the ability of an established employer organization to loyally and effectively administer a plan than a promoter whose only interest may be to sell participation to unrelated employers.⁸ Put simply, the Labor Department has been concerned that MEPs consisting of unrelated employers (known as "open MEPs") are at greater risk of mismanagement or price gouging by unscrupulous or incompetent promoters not forced to bargain and deal with an established organization representing employers. The Department has traditionally viewed its position as compelled by the statute and consistent with case law, as well as being supportive of a clear allocation to employers of the ultimate responsibility to oversee compliance with ERISA's fiduciary and other standards.

Treatment as separate plans could limit the potential economies of scale associated with joint sponsorship of a plan covering employees of multiple employers, including the efficiencies for small employers of outsourcing administrative responsibilities to entities specializing in these matters. Financial institutions, plan advisors, and other service providers have been particularly concerned that the Labor Department's restrictive position has precluded open MEPs and have appealed to policymakers seeking to expand retirement plan coverage. Accordingly, legislative proposals would eliminate the "common bond" requirement in order to enable entities other than employers—presumably including asset managers, record-keepers, professional third-party administrators, and other plan advisors—to offer ERISA-governed open MEPs. The proposals generally require the entity that organizes and runs the MEPs (referred to as a "pooled plan provider") to acknowledge its responsibilities as an ERISA "plan administrator" and "named fiduciary" and register with the Departments of Labor and the Treasury, although the bills generally stop short of requiring regulatory approval or certification. The legislation would permit employers to delegate fiduciary responsibility for plan investments (and other responsibilities) to the pooled provider or to another fiduciary, but most bills would continue to require

⁵ Dushi, Irena, Howard M. Iams, and Jules Lichtenstein. 2015. "Retirement Plan Coverage by Firm Size: An Update." *Social Security Administration* 75 (2). <https://www.ssa.gov/policy/docs/ssb/v75n2/v75n2p41.html>.

⁶ ERISA, 29 U.S.C. ch. 18 § 1001 et seq., section 3(5), (1974).

⁷ See, e.g., DOL Advisory Opinion 2012-04A (May 25, 2012) <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2012-04a>; DOL Advisory Opinion 1994-07A (March 14, 1994). <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/1994-07a>.

⁸ See, e.g., DOL Advisory Opinion 2012-04A. The Labor Department's traditional cautious position has been based in large part on the severe harm suffered by employees and small employers that relied on unscrupulous (and often thinly capitalized and financially unstable) promoters of MEPs in the health plan area. Too often, absent adequate safeguards, the Labor Department has been unable to prevent bad actors from using these "multiple employer welfare arrangements" ("MEWAs") to abscond with employee payroll contributions entrusted to them by participating small employers. That said, as pension plans, MEPs differ from MEWAs in a number of ways, including greater worker protections by reason of the qualified plan requirements and ERISA's trust requirement.

employers to act prudently and loyally in selecting the MEP and appointing and monitoring the MEP's pooled provider.

In addition, legislative proposals would amend the tax code to protect MEPs (open and closed) from the Treasury/IRS "one bad apple" rule.⁹ Under this rule, any employer's failure to comply with the qualified plan rules can jeopardize the entire MEP's tax-qualified status. The bills would let a MEP retain its tax-qualified status even if an employer violates the rules.

It is often said that open MEPs would permit small employers to "band together" to jointly sponsor a plan. However, it is generally anticipated that open MEPs will be widely established only if asset managers, record-keepers, and advisors find it sufficiently profitable to market them to small businesses. This has several implications. First, while open MEPs should promote economies of scale, they would also raise the stakes and potentially the temptations for some in the 401(k) industry. As assets under management grow, promoters marketing MEPs to employers may have a corresponding incentive to stress, if not overstate, the extent of the outsourcing – emphasizing to small employers that disinterested parties with greater experience and expertise will have full responsibility for ensuring that the quality and costs of proposed investments, the promoters' qualifications, and the related fees and arrangements will meet ERISA's high standards, including avoidance of conflicts of interest and self-dealing. And small employers, understandably reluctant to assume plan management and administrative duties, will have an incentive to believe that, in a larger enterprise such as this, others surely will be performing the requisite due diligence and minding the store.

Is any of this a problem? The law permits employers sponsoring plans, including MEPs, to delegate some fiduciary duties to professionals with the requisite qualifications, track record, and capabilities. But even employers that delegate most of their fiduciary responsibilities and plan management retain an important fiduciary duty to prudently and loyally select and monitor those to whom they delegate -- protecting participants by carefully considering a prospective MEP service provider's competence, qualifications, financial stability, and integrity, as well as the reasonableness of MEP fees and other costs. And employers that lack the requisite knowledge and experience are expected to obtain disinterested advice from independent, expert professionals. It would be risky, therefore, to completely eliminate the fiduciary duties of employers participating in MEPs -- at least without clearly shifting those duties, especially approval of potential MEP providers, to the Labor and Treasury Departments.¹⁰

In addition, legislative safeguards could usefully specify the types of institutions that can serve as MEP providers, such as regulated financial institutions, certified professional employer organizations ("CPEOs"), and state or local governments, and could support the potential for independent, expert advisors to represent and counsel participating employers. With workers' retirement security at stake, these and other safeguards would limit temptation by vendors to direct or advise investment of plan assets

⁹ One of us (Iwry), while serving at the U.S. Treasury Department, played a lead role in developing the Obama Administration's budget proposal to permit open MEPs, see U.S. Department of the Treasury, "General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals," <https://www.treasury.gov/resource-center/tax-policy/documents/general-explanations-fy2017.pdf>.

(2016), pp. 147-149, and in initiating a regulatory project in 2012 to review and potentially replace or revise the "one bad apple" rule. Despite considerable internal work at Treasury and IRS and with stakeholders, this project could not be completed before the end of the Obama administration, but might well have acquired new life by reason of Executive Order 13847, issued August 31, 2018, as discussed below.

¹⁰ See, for example, the Obama Administration's 2016 legislative open MEP budget proposal, cited in note 8, above (proposing to require providers to be regulated financial institutions that register with the Labor Department and agree to serve as an ERISA "plan administrator" and "named fiduciary", while requiring that participating employers retain basic ERISA duties regarding plan selection and monitoring of providers). See also Bipartisan Policy Center (2016), "Securing Our Financial Future: Report of the Commission on Retirement Security and Personal Savings", pp. 39-41, 104-108 (proposing to permit employers participating in an open MEP to offload their fiduciary responsibilities but only if MEP providers are certified and periodically re-certified by the Labor and Treasury Departments, including oversight by a new Labor-Treasury certification board). For somewhat different purposes, the IRS maintains a statutorily authorized voluntary certification program for professional employer organizations (PEOs) to help protect and give confidence to small employers using certified PEOs to assist them in complying with their employment tax obligations. See Tax Increase Prevention Act of 2014, Pub. L. No. 113-295 (2014) and 26 U.S. Code § 7705 (2014).

in their own products or steer investments or other plan business to those that provide them revenue-sharing or other financial incentives.

To advance the policy objective of covering more employees, some legislative proposals would limit open MEPs to employers that did not previously sponsor a plan¹¹ (while others question why existing plan sponsors should be precluded from joining a MEP if rules were in place to prevent a consequent erosion of compliance, fiduciary oversight, or coverage). Other proposals would limit participation to smaller employers, reflecting concern about the risk of MEPs being used not (or not mainly) to reduce costs through economies of scale but rather to outsource and replace existing plans in a way that could compromise worker protections.¹²

But how much risk is there that worker protections would thereby be compromised? Assessing the desirability of such statutory limitations or safeguards is challenging because it turns on practical, “real-world” judgment calls about a new, open-MEP system that are inherently uncertain. How much can the open MEP structure (absent regulatory approval of MEP sponsors) be expected to increase risks that worker protections would be compromised because MEP sponsors (like too many MEWA sponsors in the past) might be conflicted, unqualified, thinly capitalized, or unscrupulous—or because participating small employers will believe that minding the store is someone else’s job?

It is of course legitimate and understandable for small employers in particular to wish to sponsor a plan while also minimizing their fiduciary and administrative responsibilities to the fullest extent permitted by law. And many employers that sponsor single-employer plans currently minimize their responsibilities in a lawful manner by delegating to other fiduciaries and service providers in accordance with ERISA. The question for Congress and the Labor Department then becomes how best to balance the need to protect workers and small employers (given the natural temptation for employers in an open MEP to turn over not only most, but essentially all responsibility to the sponsor) with the desirability of allowing open MEPs to realize whatever potential they might have to expand coverage?

Finally, we think there is reason to expect the impact of open MEPs to be positive, but not dramatic. Most economies of scale reducing costs and hassles for small employers stem not from maintaining a single plan under ERISA but from providing multiple employers the same low-cost investment lineup and offloading most of their responsibilities to the same professional and reasonably-priced record-keeper, third-party plan administrator, and advisors. This can be and largely has been done in the market already using identical prototype or other standardized plans (or existing “closed” MEPs). The incremental cost savings from treatment under ERISA as a single plan rather than multiple identical plans derives chiefly from the filing by multiple employers of a single annual report with the government and, if more than one participating employer is subject to plan audit because it has at least 100 participants, performing a single plan audit for them.¹³ But the cost savings from single reporting and single audit are not large relative to the savings currently achievable by using separate but identical and commonly administered plans and a single, low-cost investment lineup.

That said, we believe open MEPs are likely to help expand coverage to some extent—partly from incremental cost savings, but mostly because the “public marketing” resulting from new legislation will give vendors a fresh sales pitch. But especially because the actual cost reductions and gains in coverage

¹¹ The Obama Administration’s 2016 legislative open MEP budget proposal is limited to employers that have not maintained a qualified plan within the previous three years. See note 8, above.

¹² See generally, *Testimony Before the U. S. House of Representatives Committee on Education and the Workforce, Subcommittee on Health, Employment, Labor, and Pensions, Hearing on “Enhancing Retirement Security: Examining Proposals to Simplify and Modernize Retirement Plan Administration”* (Statement of J. Mark Iwry), pp. 2-3 (2018).

¹³ Even when each employer is treated as sponsoring a separate plan under ERISA, if the plans are substantially identical, the costs of separate annual reports can be minimized by prepopulating and centrally preparing the reports and, if audits are required, by negotiating fees for multiple similar audits with a single CPA.

will probably not be dramatic, the legislation encouraging open MEPs should reflect a careful weighing of the associated risks, tradeoffs, and need to protect workers and the system. In fact, one of the reasons for uncertainty as to the ultimate impact of the proposed open MEP legislation on expansion of coverage is its failure to come to grips with one key issue: how far will MEP providers be able to go in directing or recommending investments in which they have financial interests, direct or indirect? At the heart of this issue is the sensitive tradeoff between allowing industry greater financial incentives to work to expand coverage and protecting workers against conflicted investment advice and high fees and expenses. Congress thus far has chosen to leave it to the regulators to determine how, specifically, ERISA's conflict-of-interest and related fiduciary standards should apply to open MEPs, and stakeholders have asked the Department to address it in its MEP rulemaking.

More generally, the case for erring on the side of greater legislative safeguards—at least initially—is strong insofar as the employers likely to participate in open MEPs include, in a sense, much of the “higher hanging fruit” in the small business market. Many have not been sufficiently large, stable, or successful to have adopted a 401(k) or other plan to date, and therefore present greater risks of going out of business or suffering financial distress (as small businesses often do) after joining a MEP—to the detriment of employees. Too often in the past, small businesses in dire financial straits have diverted or delayed remittance to the plan of amounts withheld from employees' paychecks or amounts the employer was obligated to contribute to employees' accounts in the plan. Because these small businesses are the target market for open MEPs, there is a greater risk that open MEPs will include one or more unresponsive, noncompliant, or failing employers that would not otherwise have ventured into plan sponsorship. Weeding out such “bad apples” in a MEP and protecting employees from the consequences is not simple. While identifying and resolving these compliance problems is a necessary consequence of expanding coverage through MEPs, it presents special enforcement and administrative challenges for the IRS in particular, as well as for the MEP organizers, service providers, and compliant participating employers.

Accordingly, open MEP legislation should not slow expansion of coverage by other means, notably the genuine breakthrough in coverage achievable through automatic enrollment of uncovered workers in private-sector, workplace IRAs. Coverage expansion from auto-enrolling millions in IRAs and thereby indirectly spurring wider adoption of 401(k)s promises to be far greater than the incremental progress most knowledgeable observers expect from MEPs.

II. Reforming Required Minimum Distributions

The Required Minimum Distribution (RMD) rules are essentially designed to require tax-advantaged retirement savings to be used during retirement. The rules were put in place largely to discourage taxpayers from using retirement accounts as tax shelters for passing wealth to heirs tax-free and to ensure that the estimated \$200 billion in annual tax expenditures for retirement are used for their intended purpose.

Over the years, legislative proposals, particularly from the financial services industry seeking to preserve more assets under management, have sought to permit greater tax deferral by postponing the RMD required beginning date from 70½ to a later age such as 75. The rationale generally has been to match increased life expectancies. For years these proposals failed to get much traction mainly because of the difficulty of finding acceptable offset provisions to pay for their large estimated revenue loss.

During the past decade, other changes have been proposed in the interest of major simplification of the RMD rules for millions of seniors to relieve them of anxiety about compliance and the threat of the whopping 50 percent excise tax for noncompliance. From 2013 through 2016, the Obama Administration Treasury Department proposed simplifying RMDs for most seniors by fully exempting from RMDs all

taxpayers with less than \$100,000 in their aggregate plan retirement accounts and IRAs at age 70½.¹⁴ Far more progressive than postponing the required beginning age from 70½ to 75, this relief may also be more cost-efficient because it is targeted to those whose modest account balances suggest they collectively are unlikely to pursue substantial tax deferral after death. While RMDs provide a necessary guardrail to prevent high-net-worth savers from abusing generous retirement tax preferences, compliance is costly for most elderly savers because the rules are not very flexible and can be complex. Exempting low balance accounts from RMDs would help millions of older Americans¹⁵ currently subject to these requirements who cannot afford to hire a financial advisor or accountant to assist and who often are coping with forgetfulness or other cognitive decline.

Both RESA and the late-2018 House Republican legislation would address RMDs, but in different ways. The House legislation (but not RESA) would adopt a more limited version of the Obama Treasury proposal, exempting from RMDs all seniors with less than \$50,000 in tax-preferred retirement assets.¹⁶ Before he became Chairman, Rep. Neal had also introduced legislation that followed the Obama Treasury approach but proposed a \$250,000 exemption. On the other hand, RESA (including RESA 2019 but not the late-2018 House Republican bills) would fill a gap in the existing RMD rules and would raise revenue to pay for its revenue-losing provisions by imposing stricter RMD standards on so-called “stretch IRAs” and defined contribution plans following the account holder’s death—an approach generally similar to that taken in the Obama Administration budget proposals and earlier Senate Finance Committee proposals. The legislation generally would curtail the practice of stretching out tax deferral for decades after the account holder’s death by designating young nonspousal beneficiaries such as grandchildren to receive the benefits over their lifetime. The bill would instead require that distributions of savings exceeding \$450,000 be taken within five years after the saver’s death. Exceptions would be made for distributions to the saver’s surviving spouse, beneficiaries not more than ten years younger than the saver, disabled or chronically ill individuals, or children who have not reached the age of majority.

Curtailling the “stretch IRA” is good policy. However, a dollar-based exception would preserve too much of the stretch IRA and probably would be impractical, if not impossible, to administer. In any event, under the progressive exemption discussed earlier, smaller balances would be entirely exempt from RMDs. By combining the two approaches, a curtailment of stretch IRAs would help offset the revenue cost of exempting seniors with modest balances from RMDs.

III. Promoting Lifetime Income: Safe Harbor for Selection of Annuity Provider

In a 2016 Willis Towers Watson survey on lifetime income solutions, 81 percent of plan sponsors indicated fiduciary risk was an important barrier in their decision to not consider lifetime income solutions as retirement options. Similarly, a survey of plan sponsors by the Government Accountability Office (GAO) found that of the 39 respondents that did not offer an annuity, 26 reported that their decision was partly due to concerns over the “resources required to obtain liability relief.”¹⁷ One way plan sponsors can use resources in an effort to limit their exposure to ERISA fiduciary liability for allegedly imprudent evaluation of an annuity provider’s long-term financial strength is to engage a consulting firm or other person or entity to serve as an expert, independent fiduciary that would make that assessment or advise the plan sponsor on it. This is because plan sponsors rarely have the expertise needed to assess and compare the long-term financial strength and claims-paying ability of insurance companies that offer

¹⁴ See citation in note 8, above. The original proposal called for a \$75,000 exemption amount. All proposals would index the exempt amount to inflation.

¹⁵ A PWC Employee Financial Wellness Survey (2017) found that roughly 30 percent to 37 percent of baby boomers have saved less than \$50,000 in retirement assets.

¹⁶ The \$50,000 RMD exemption has been estimated to cost \$6.2 billion in revenue over ten years. Joint Committee on Taxation. 2018. JCX-73-18. “Description Of H.R. 6757, The ‘Family Savings Act Of 2018.’” <https://www.jct.gov/publications.html?func=startdown&id=5138>.

¹⁷ U.S. Government Accountability Office. 2016. “401(k) Plans: DOL Could Take Steps to Improve Retirement Income Options for Plan Participants” GAO 16-433. Washington, D.C. <https://www.gao.gov/assets/680/678924.pdf>.

suitable commercial annuities. Yet it is hard to make a case that it would be an efficient use of resources to require each plan sponsor interested in offering annuities to engage and compensate an independent expert to conduct what will often be essentially the same analysis and assessment of the same insurance carriers. The similar and specialized nature of these financial assessments calls for a safe harbor or other uniform approach.

Accordingly, both RESA and the late-2018 House legislation contained safe harbor provisions suggested largely by the insurance industry to protect defined contribution plan sponsors or other fiduciaries from potential fiduciary liability under ERISA for their selection of lifetime income providers.¹⁸ Fiduciaries are still expected to undertake an objective, thorough, and analytical search for annuity providers, but the legislative safe harbor provisions are intended to simplify and clarify this process, making it much more explicit, objective, and attainable.

Under the provisions, a plan fiduciary would not be held liable for losses to participants owing to the annuity provider's inability to meet its financial obligations under an annuity contract if the fiduciary obtains written representations from the insurance company that it is licensed to offer annuity contracts, has for the previous seven years operated under a valid certificate of authority from its domiciliary state, has filed audited financials, maintains reserves that satisfy state requirements, is not operating under an order of supervision, rehabilitation or liquidation, and undergoes, every five years, a financial examination by the state. Fiduciaries also are not required to opt for the lowest cost annuity contract, although they are expected to take into account in their evaluation the cost of the contract and its value, benefits and features, and the financial strength of the insurer.

Our understanding of most of the discussions and intent underlying the safe harbor is that the safe harbor proposal generally has been intended to protect plan fiduciaries from liability for imprudence with respect to selection of the annuity provider as opposed to the cost or other terms of the annuity contracts. Costs and other contract terms (in contrast to the carrier's long-term claims-paying ability) are factors that fiduciaries could more reasonably be expected to evaluate and potentially negotiate, and that tend to vary from one situation to the next, thereby calling for a fact-specific analysis rather than a one-size-fits-all safe harbor. If Congress were so inclined, a bit of residual ambiguity in current legislative language could be cleared up to confirm that the scope of the safe harbor protection is limited to selection of the annuity carrier (based on its claims-paying ability) and does not extend to selection or negotiation of contract terms.¹⁹

Notably, the legislative provisions also appear not to be limited to fixed income annuity contracts, as opposed to variable or other types or annuities; nor do they set any objective or relative quality standards relating to the degree of financial strength of the insurance company beyond the rather basic and minimalist standards specified in the bill. In other words, the pending safe harbor protection does not apply only when fiduciaries select insurance companies that are among the financially strongest, or even among the comparatively strong, annuity providers in the market.

IV. Promoting Lifetime Income Through Disclosure

Proposals have been made since at least 2008²⁰ to encourage 401(k) plans to include lifetime income disclosure in annual benefit statements provided to participants— largely by protecting plan

¹⁸ A similar bill, Increasing Access to a Secure Retirement Act of 2017, H.R. 4604, 115th Congress (2017), was introduced in 2018 by Reps. Walberg (R-MI) and Rochester (D-Del.).

¹⁹ See Statement of J. Mark Iwry, pp. 3-4 (2018), cited in note 12, above.

²⁰ Gale, William, J. Mark Iwry, David C. John and Lina Walker. 2008. "Increasing Annuitization in 401(k) Plans With Trial Income." Retirement Security Project. Brookings Institution. No. 2008-2. <https://www.brookings.edu/research/increasing-annuitization-of-401k-plans-with-automatic-trial-income/>

sponsors from liability exposure if they do so—or to require such disclosure. Such a proposed requirement, originally incorporated in the 2009 Lifetime Income Disclosure Act,²¹ was later included in RESA. Regular benefit statements would be required to include illustrative projections of a monthly retirement income stream payable if participants' full account balances were applied to provide lifetime income. However, the legislation would provide protection from potential liability resulting from inevitable differences between projections based on Labor Department assumptions and actual monthly incomes. Model disclosure language would explain that these are only illustrations.

The purpose of this proposed lifetime income disclosure is to better inform 401(k) participants about their retirement choices, given that many individuals find it difficult to convert an account balance into a future income stream. Projections would roughly illustrate the income a current or future plan account might be expected to purchase at retirement given reasonable assumptions, helping savers more realistically evaluate whether their retirement planning is on track. And, especially if the projected streams reveal inadequate savings, individuals might be driven to save more, seek alternative, potentially more lifetime-income oriented retirement options, and generally take a more active role in retirement planning.

However, concerns have been raised by some plan sponsor representatives and by sectors of the financial services industry that compete with insurers. Some argue that required income projections could prove burdensome and costly for employers (including the expense of using outside vendors) and might mislead employees, as projections made long before retirement would virtually never prove to be accurate predictions, and often would not even come close.

One potential approach that would minimize burden and maximize protection for plan sponsors would permit compliance with such a benefit statement requirement by including educational material about lifetime income with model language provided by the Labor Department that links to the Department's online lifetime income calculator (and any updated versions of this Labor Department tool).²² (Some have suggested the alternative of allowing plans to let participants instead use a private-sector tool or calculator made available by the plan if it meets regulatory standards.) This approach would enable plans to avoid providing the assumptions, performing the calculations, and providing a resulting illustration that presents a specific monthly dollar amount. Instead, participants could use the calculator (and could input alternative sets of their own assumptions) to generate alternative illustrative projections of the income equivalent of their account balance. That said, proponents of requiring plans to provide the illustrative income equivalent would point out that, from a practical, behavioral standpoint, many participants who would otherwise be effectively forced to see an illustrative projection upon opening their benefit statement could be expected to not make the admittedly minimal effort to input the information to an online calculator and generate the projection themselves.

Other arguments for requiring plans to simply furnish educational material linking to a tool for projecting the income equivalent include the risk that younger participants with relatively modest account balances will not find the projections meaningful and will be discouraged when they see how small a stream of income their current account balance is projected to provide. Instead of saving more, some might despair of ever saving enough and just walk away from the whole retirement saving enterprise. One response is to require plans to project future contributions when projecting current account balances forward to retirement age before conversion to an illustrative retirement income equivalent. Although the additional assumptions needed to project future saving would add uncertainty, a projected future account balance that assumes continued saving could be more realistic and less discouraging for those not

²¹ Lifetime Income Disclosure Act, S. 2832, 111th Congress (2009), introduced by Senators Bingaman, Isakson, and Kohl.

²² The current Labor Department calculator is available at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/advanced-notice-of-proposed-rulemaking/lifetime-income-calculator>.

currently near retirement age. This concern also might be mitigated by requiring plans to furnish income illustrations only to participants above a specified age, thereby avoiding very long-term projections.

Yet another concern is that participants might disregard or discount the caveats and warnings about the illustrative and hypothetical nature of the projections, leading to misunderstanding and possible claims that participants relied on the projections as promising a specific amount of retirement income or as promising that the plan would make available a retirement income distribution option (even though most 401(k) plans do not offer an annuity). Some might argue also that if, instead of requiring the plan to perform and provide the illustrative income projections, plans were required only to furnish a tool enabling participants to project, it might also encourage a natural and useful sorting among participants. The group that is willing to take the trouble to do the projection may be relatively highly correlated with those whose review of such income illustrations would motivate them to save more rather than give up on saving.

RESA would require plans to convert “total accrued benefits” into income equivalents. It is difficult to read this as requiring—or perhaps even permitting—conversion of future projected account balances as opposed to conversion of current ones. Yet an illustration based only on the current account balance is less useful than both that illustration and another that converts a projected future account balance to its income equivalent (while emphasizing the speculative nature of the assumptions and hence the merely illustrative nature of the projections). Moreover, RESA requires the Labor Department to prescribe assumptions to be used in converting account balances but not projecting account balances. Accordingly, the Department could conclude that Congress fail to authorize it to require projection of account balances, and plan sponsors might conclude it is too risky to project without using governmentally prescribed assumptions. Absent revision of RESA to require projection—or at least to require Labor to prescribe assumptions for plans that wish to provide income illustrations based on projected account balances—there is a strong argument that Congress could have been explicit about projecting account balances and therefore apparently chose neither to require nor to facilitate it.

Meanwhile, the market has been moving forward for some years now. Notably, online tools enable participants to perform “gap analysis” to assess the risk that their current saving strategy will be inadequate and to estimate the changes needed to close the gap between projected and desired retirement income. These tools and websites project future income equivalents based on both current and projected future account balances and using various alternative assumptions (which participants typically can choose and repeatedly change) about future saving rates, investment returns, discount rates, and the like. It would be unfortunate if legislation had the unintended effect of chilling this helpful private-sector creativity either by discouraging illustrations based on both current and projected future account balances or by being too narrowly prescriptive in specifying permissible assumptions.

V. Retirement Saving Incentives and “Universal Saving Accounts”

The Family Savings Act introduced in the House in September 2018 included a provision creating a new saving vehicle called “Universal Saving Accounts,” or USA accounts. They would allow taxpayers to contribute up to \$2,500 to a tax-favored account each year (permitting each spouse, in the case of a married couple, to contribute this amount, for a total of up to \$5,000 per year per couple), allowing contributions to grow tax-free indefinitely. These accounts would be more tax-favored than Roth-type accounts, as they would enable savers to withdraw funds any time for any reason, imposing no holding periods or other conditions on the tax-free treatment of any withdrawals and no income-based eligibility conditions. They also would place no cumulative limit on the amount that could be accumulated over time in these accounts. The Joint Committee on Taxation projected the proposed USA accounts to lower federal revenue by \$8.6 billion over 10 years.

The proposed USA accounts are poorly designed to boost retirement saving and, given their tax advantages and lack of income eligibility standards, are likely to be used mainly by higher-income people to shift assets from standard accounts to tax-favored savings. While allowing annual tax-favored, unconditioned contributions of up to \$2,500 (\$5,000 per couple), the accounts have no withdrawal or anti-leakage tax rules designed to overcome natural myopia or present bias in order to promote saving for the longer term. As a result, and given their exemption from ERISA's protections for workers and the tax-qualified plan nondiscrimination and other standards, the accounts are likely to substitute to a significant extent for existing retirement saving, drawing substantial contributions away from the less liquid 401(k)s and IRAs. The substitution would be greatest for the many savers or potential savers who are not eligible for a 401(k) plan with an employer matching contribution. This, combined with the lack of incentive to hold assets until retirement, could actually undermine retirement security if savers used their USA assets for non-retirement purposes.

In addition, the USA accounts would be poorly targeted: without income-based eligibility rules, they would be highly regressive, offering the most value to high-income taxpayers—who are less reliant on saving incentives for a secure retirement and already benefit disproportionately from existing tax preferences²³ Combined, we believe these likely impacts to be fatal,²⁴ and note that House Republicans dropped this provision from their legislation late in 2018.

Conclusion

As traditional (defined benefit) retirement plans gradually disappear, it is important to look for ways to improve retirement security. Social Security is a cornerstone of retirement for low- and moderate-income households, and its financial status must be strengthened. In addition, Congress and the Administration should expand coverage while looking for ways to encourage retirement saving and improve security for those who can save but still face uncertainty about their longevity and income needs. Fortunately, retirement policy is one area where bipartisan actions are possible, and solutions along the lines of those discussed here (with appropriate changes, and with the exception of Universal Savings Accounts) are generally a step in the right direction (assuming they were paid for). The proposals described here need some revision, as discussed, and would not do enough. In these highly polarized times, however, it is good to see forward progress in tackling America's retirement challenges.

²³ For example, Harris *et al.* (2014) find that tax preferences for retirement saving reduce after-tax income for the bottom quintile by just 0.1 percent, but by 1.8 percent for the top quintile. Harris, Benjamin H., C. Eugene Steuerle, Signe-Mary Mckernan, Caleb Quakenbush, and Caroline Ratcliffe. 2014. "Tax Subsidies for Asset Development: An Overview and Distributional Analysis." The Urban Institute.

²⁴ For other comments, see, e.g., Duke, Brendan, "'Universal Savings Account' Proposal in New Republican Tax Bill Is Ill-Conceived." *Center on Budget and Policy Priorities*. September 19, 2018. <https://www.cbpp.org/research/federal-tax/universal-savings-account-proposal-in-new-republican-tax-bill-is-ill-conceived>.